IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.1413 of 1998
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For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 : NO

RAJU BHARATKUMAR THAKKAR ALIAS VIKRAMSINH SHAILESHSINH
Versus
COMMISSIONER OF POLICE

Appearance:
MR BC DAVE for Petitioner
GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.R.SHELAT
Date of decision: 06/05/98

ORAL JUDGEMENT :

The Commissioner of Police for the city of Ahmedabad on 6th December 1997 passed order of detention against the petitioner invoking his powers under sec.3(2) of the Gujarat Prevention of Anti Social Activities Act (for short "the Act"). Pursuant to that order the petitioner at present is kept under detention. Hence this application is filed by the petitioner challenging

the order of detention.

2. House breaking, burglary, theft, robbery and docoity terrorising the people, were found to be the eye opener of the Police. The Police Commissioner, therefore, inquired into and found that against the petitioner four complaints were lodged for the offences punishable under secs.454, 380, 511, 457 read with sec.114 of IPC. As alleged in those complaints the petitioner had committed theft of golden and silver ornaments and other valuable articles. By such offences he had created panic and psychosis in the minds of the people. The people were feeling insecured thinking that at any time they might be victims and would not be able to save or protect their lives or properties being helpless. The Police Commissioner, therefore, made an attempt to record some statements, but no one was willing to come forward because of fear of violence. After considerable persuasion, some of the persons showed their willingness to give their statement, but on the assurance that their identity would not be disclosed. Because of such assurance statements could be recorded. On perusal thereof the Police Commissioner was convinced of the fact that the petitioner was a dangerous person within the meaning of the Act. By committing offences in succession he had put several persons in fear of death or injury, and as no one was challenging his action he had become more and more wicked and had amplified his subversive and nefarious activities. The public order was substantially disturbed and there was all possibility of the same being shattered and battered, if the petitioner was not nabbed at the nick of time. When in order to curb the activities of the petitioner several actions were thought of, the Police Commissioner was of the firm view that any action under general law, if taken would be a futile exercise, the only way out was to pass order of detention and detain the petitioner. In the result the same has been done. Therefore, the present application is filed challenging the order of detention.

3. While challenging the order, the petitioner has raised several grounds, but, at the time of hearing, the learned advocate representing the petitioner confined to the only point namely exercise of privilege under section 9(2) of the Act, going to the root of the case. Both the parties, therefore, submitted on that point. I will, therefore, confine to that point only.

4. Before I proceed, it would be better if the law about non- disclosure of certain facts is elucidated. Reading Article 22(5) of the Constitution of India, what

becomes clear is that the grounds on which order of detention is passed are required to be communicated to the detenu. The detenu is, therefore, required to be informed not merely factual inference and factual material which led to inference namely not to disclose certain facts, but also the sources from which the factual material is gathered. The disclosure of sources can enable the detenu to draw the attention of the detaining authority in the course of his representation to the fact whether the factual material collected from such sources would be relied upon and used against him on the facts and circumstances of the case. Subject to the limitation mentioned in Article 22(6) of the Constitution of India and section 9(2) of the Act, the detaining authority is of course empowered to withhold such facts and particulars, the disclosure of which he considers to be against the public interest. The privilege of non disclosure has to be exercised sparingly and in those cases, where public interest dictating non disclosure overrides the public interest requiring disclosure. Hence the detaining authority must be fully satisfied on the basis of overall study that the apprehension expressed by the informant is honest, genuine and reasonable in the circumstances of the case. With a view to satisfy itself whether the fear of violence and consequential feelings of insecurity or apprehension of a wrong would be done to them at any time by the detenu by those making statement against the detenu is imaginary or fanciful; or an empty excuse or well founded for disclosing or not disclosing certain facts or particulars of those persons, the authority making the order has to make necessary inquiry applying his mind. What can be deduced from some constitutional as well as legal scheme whereunder obligation to furnish the grounds and the duty to consider whether the disclosure of any facts involved therein is against public interest are both vested in the detaining authority and not in any other. The authority passing the order of detention has to apply his mind and should itself be satisfied to the question whether or not the supply of the relevant particulars and materials would be injurious to the public interest. If the task of recording statements and necessary inquiry is entrusted to others, and if he mechanically endorses or accepts the recommendation of others or subordinate authority in that behalf without applying mind and taking his own decision, the exercise of power would be vitiated as arbitrary. What is further required is that the detaining authority must file his affidavit to satisfy the court that he had sincerely and honestly applied the mind for the bonafide exercise of the powers about disclosure and privilege regarding non disclosure so that

the court can examine rational connection between the ground disclosed or not disclosed in public interest. If no affidavit explaining the exercise of the power is filed, the court can infer against the detaining authority. If the affidavit is filed explaining the exercise of the power, the detenu may challenge the privilege exercised on the ground that the same is vitiated by factual or legal malafides. For my such view, a reference of a decision in the case of Bai Amina, w/o Ibrahim Abdul Rahim Alla v. State of Gujarat and others, 22 GLR 1186 held to be the good law by the Full Bench of this Court in the case of Chandrakant N. Patel v. State of Gujarat and others 35(1) [1994(1)] GLR 761, may be made.

5. In view of such law, it was absolutely necessary on the part of the detaining authority to file affidavit and explain what were the circumstances and facts which led him to exercise his jurisdiction in the public interest. It is pertinent to note that no such affidavit is filed. It can, therefore, be assumed that without application of mind and without just cause, the privilege is exercised. Reading the order it appears that the task to ascertain whether fear expressed by the witnesses is honest or genuine, or is imaginary or merely an excuse was entrusted to the subordinate officer. Whatever report was sent, the detaining authority, reposing trust in the officer accepted the same and passed the order. He has, thus, passed the order without application of mind and without examining the report as to whether it was reliable and hence the subjective satisfaction of the detaining authority is vitiated. The facts suppressed ought to have been furnished to the petitioner. Had the same been furnished the petitioner could have pointed out before the authority as to how those statements were not reliable. Right to make effective representation is thus violated. The continued detention, therefore, cannot be held to be constitutional and legal. The order of detention is, therefore, required to be quashed.

6. For the aforesaid reasons this petition is allowed. The order of detention passed on 6th December 1997 by the Police Commissioner, Ahmedabad City, is hereby quashed and set aside, and the petitioner detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is accordingly made absolute.

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